Bancroft Plaza, Inc. *and* Local 1102, R.W.D.S.U., U.F.C.W., AFL–CIO. Case 2–CA–28011

February 13, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

Upon a charge and amended charge filed by the Union on December 2, 1994, and April 24, 1995, the General Counsel of the National Labor Relations Board issued a complaint on May 18, 1995, against Bancroft Plaza, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On November 29, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On December 7, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 22, 1995, notified the Respondent that unless an answer were received by September 28, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation with an office and place of business in New York, New York, has been engaged in the retail sale of apparel. Annually, the Respondent, in conducting its business operations, derives gross revenues in excess of $500,000 and purchases and receives at its facilities goods valued in excess of $5000 directly from points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All sales and service employees of the Employer, excluding guards, watchmen, clerical employees and supervisors as defined in the National Labor Relations Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from July 1, 1994, through June 30, 1997. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About June 1994, the Respondent and the Union commenced negotiations for a collective-bargaining agreement to succeed the agreement then in effect for the period through June 30, 1994. About October 6, 1994, the Union and the Respondent reached complete agreement on the terms and conditions of employment of the unit to be incorporated in a new collective-bargaining agreement (the October 6, 1994 agreement). Since about October 17, 1994, the Union has requested that the Respondent execute a written contract containing this agreement, and the Respondent has failed and refused to do so.

Both the collective-bargaining agreement that expired on June 30, 1994, and the current, October 6, 1994 agreement require the Respondent to make monetary contributions to the Health and Welfare and Insurance Fund, Local 1102, AFL–CIO (Welfare Fund) on behalf of the unit employees on or before the 10th of each month. The collective-bargaining agreement that expired on June 30, 1994, required the Respondent to make monetary contributions to the Local 1102 Labor Management Retirement Fund (Pension Fund) on behalf of unit employees on or before the 10th of each month. The October 6, 1994 agreement requires no contributions to the Pension Fund on behalf of employees until July 1, 1995. Both the collective-bargain-

ing agreement that expired on June 30, 1994, and the October 6, 1994 agreement also require the Respondent to deduct dues and initiation fees from the wages of unit employees and remit these dues to the Union not later than the 15th day of the next month following collection of dues, and to pay employees who have been terminated through no fault of their own severance pay on the date of such termination. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent has unilaterally modified the terms of the October 6, 1994 collective-bargaining agreement and the expired collective-bargaining agreement by failing, since about May 10, 1994, and continuing to date, to make payments to the Welfare Fund; by failing to make payments to the Pension Fund on or before May 10, June 10, July 10, August 10, September 10, and October 10, 1994; by failing, since about May 15, 1994, and continuing to date, to remit dues to the Union; and by failing to pay severance pay to employees who have been terminated.[1] The Respondent engaged in this conduct without prior notice to the Union and without obtaining the Union's consent with respect to such acts and conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused, since about October 17, 1995, to execute the October 6, 1994 agreement, we shall order the Respondent to execute the agreement, give it retroactive effect, and make unit employees whole for any losses attributable to the Respondent's failure to execute the agreement. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since about May 10, 1994, to make contractually required payments to the Welfare Fund and by failing to make contractually required payments to the Pension Fund on or before May 10, June 10, July 10, August 10, September 10, and October 10, 1994, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.[2]

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing, since about May 15, 1994, to remit to the Union dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations, we shall order the Respondent to remit such withheld dues to the Union as required by the agreements, with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing to pay the contractually required severance pay to employees who have been terminated, we shall order the Respondent to make whole its unit employees by making all such severance payments that have not been paid, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Bancroft Plaza, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to execute a written contract containing the terms and conditions of employment of the unit agreed to by the parties about October 6, 1994:

> All sales and service employees of the Employer, excluding guards, watchmen, clerical employees and supervisors as defined in the National Labor Relations Act.

(b) Unilaterally modifying the terms of the October 6, 1994 collective-bargaining agreement and the collective-bargaining agreement that expired on June 30, 1994, by failing to make payments to the Welfare

[1] About September 1994, the Respondent reaffirmed its obligation to make these payments.

[2] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

Fund or the Pension Fund, by failing to remit dues to the Union, or by failing to pay severance pay to employees who have been terminated.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute the collective-bargaining agreement reached by the parties on October 6, 1994, give it retroactive effect, and make unit employees whole for any losses attributable to the Respondent's failure to execute the agreement in the manner set forth in the remedy section of this Decision.

(b) Make all delinquent contractually required payments to the Welfare Fund since about May 10, 1994, and the contractually required payments to the Pension Fund due on or before May 10, June 10, July 10, August 10, September 10, and October 10, 1994, and make whole its unit employees in the manner set forth in the remedy section of this Decision.

(c) Remit to the Union, with interest, dues that were deducted since about May 15, 1994, from the pay of unit employees pursuant to valid dues-checkoff authorizations in the manner set forth in the remedy section of this Decision.

(d) Pay all contractually required severance pay, with interest, to all unit employees who have been terminated in the manner set forth in the remedy section of this Decision.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in New York, New York, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 13, 1996

William B. Gould IV,	Chairman
Margaret A. Browning,	Member
Charles I. Cohen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to execute a written contract containing the terms and conditions of employment of the unit agreed to by us and Local 1102, R.W.D.S.U., U.F.C.W., AFL–CIO about October 6, 1994:

> All of our sales and service employees, excluding guards, watchmen, clerical employees and supervisors as defined in the National Labor Relations Act.

WE WILL NOT unilaterally modify the terms of the October 6, 1994 collective-bargaining agreement or the collective-bargaining agreement that expired on June 30, 1994, by failing to make payments to the Health and Welfare and Insurance Fund, Local 1102, AFL–CIO or to the Local 1102 Labor Management Retirement Fund, by failing to remit dues to the Union, or by failing to pay severance pay to employees who have been terminated.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL execute the collective-bargaining agreement reached by the parties on October 6, 1994, give it retroactive effect, and make unit employees whole for any losses attributable to our failure to execute the agreement.

WE WILL make all delinquent contractually required payments to the Health and Welfare and Insurance Fund, Local 1102, AFL–CIO since about May 10, 1994, and the contractually required payments to the Local 1102 Labor Management Retirement Fund due on or before May 10, June 10, July 10, August 10, September 10, and October 10, 1994, and make our unit employees whole, with interest.

WE WILL remit to the Union, with interest, dues that were deducted since about May 15, 1994, from the pay of unit employees pursuant to valid dues-checkoff authorizations.

WE WILL pay all contractually required severance pay, with interest, to our unit employees who have been terminated.

BANCROFT PLAZA, INC.